



Suzanne Henderson

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**OIL AND GAS LEASE**  
(No Surface Use; Paid Up Lease)

This Oil and Gas Lease (this "Lease") is made on **October 1, 2008** between **Gary D. Pence and Carole D. Pence, husband and wife**, (hereafter called "Lessor"), whose address is **3413 Whitney Way, Hurst, Texas 76054**, and **XTO Energy Inc.** (hereafter called "Lessee"), whose address is **810 Houston Street, Fort Worth, TX. 76102.**

**1. Grant.** In consideration of Ten Dollars and other consideration in hand paid, Lessor grants and leases exclusively unto Lessee the land described in attached Exhibit A (the "Land") in Tarrant County, Texas, for the sole purpose of exploring, drilling, and producing oil and gas, and to produce, save and transport oil and gas and other products manufactured from oil and gas produced from the Land, but only as to depths below 1,000 feet beneath the surface of the ground. This lease also covers and includes any interest which Lessor may own in any street, alley, highway, railroad, canal, river, body of water, contiguous or adjacent to the Land, whether the same be in said survey or surveys or in adjacent surveys, although not included within the boundaries of the land particularly described above.

**2. Primary Term.** This Lease is for a term of three (3) years from this date (called "Primary Term") and so long thereafter as oil or gas is produced from the Land, or lands pooled therewith, in paying quantities.

**3. Minerals Covered.** This Lease covers only oil and gas. The term "oil and gas" means oil, gas, and other liquid and gaseous hydrocarbons and their constituent elements produced through a well bore. All other substances and minerals (~~including water~~) are excepted from this Lease and reserved to Lessor.

**4. Royalty.**

(a) As royalties, Lessee agrees:

(1) To pay to Lessor, on oil and other liquid hydrocarbons produced and saved from the Land, 25% (the "Royalty Fraction") of the market value at the point of sale of such oil, or at Lessor's option, which may be exercised from time to time, the Royalty Fraction of all oil and other liquid hydrocarbons produced and saved from the Land, which shall be delivered free of expense to Lessor at the wells or to the credit of Lessor at the pipeline to which the wells may be connected.

(2) To pay to Lessor:

(i) On gas produced from the Land and sold by Lessee or used off the Land and to which the following subparagraphs (ii) and (iii) do not apply, the Royalty Fraction of the market value at the point of sale, use or other disposition, less the deductions authorized in subparagraph 4(c) below.

(ii) On gas produced from the Land that is processed in a processing plant in which Lessee or an affiliate of Lessee has a direct or indirect interest, the higher of the Royalty Fraction of the market value of the gas at the inlet to the processing plant, or the Royalty Fraction of the market value of all processed liquids saved from the gas at the plant plus the Royalty Fraction of the market value of all residue gas at the point of sale, use, or other disposition, less the deductions authorized in subparagraph 4(c) below.

(iii) On gas produced from the Land that is processed in facilities other than a processing plant in which Lessee or an affiliate of Lessee has a direct or indirect interest, the Royalty Fraction of the market value at the plant of all processed liquids credited to the account of Lessee and attributable to the gas plus the Royalty Fraction of the market value of all residue gas at the point of sale, use, or other disposition, less the deductions authorized in subparagraph 4(c) below.

(b) The market value of gas will be determined at the specified location by reference to the gross heating value (measured in British thermal units) and quality of the gas. The market value used in the calculation of oil and gas royalty will never be less than the proceeds received by Lessee in connection with the sale, use, or other disposition of the oil or gas produced or sold. For purposes of this paragraph, if Lessee receives from a purchaser of oil or gas any reimbursement for all or any part of severance or production taxes, or if Lessee realizes proceeds of production after deduction for any expense of production, gathering, dehydration, separation, compression, transportation, treatment, processing, storage, marketing, or remediation, then the reimbursement or the deductions will be added to the proceeds received by Lessee except as set forth in subparagraph 4(c) below. Royalty will be payable on oil and gas produced from the Land and consumed by Lessee on the Land for compression, dehydration, fuel, or other use.

(c) Except as permitted herein, it is agreed between the Lessor and Lessee, that, notwithstanding any language herein to the contrary, all oil, gas or other proceeds accruing to the Lessor under this Lease or by state law shall be without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and marketing the oil, gas and other products produced hereunder to transform the product into marketable form. Further, in no event shall Lessor receive a price that is less than the price received by Lessee from an arms-length contract with a purchaser that is not an affiliate of Lessee. It is the specific intent of the parties to this Lease that this provision is to be treated as enforceable as written and is not to be deemed "surplusage" under the principals set forth in *Heritage Resources v. Nations Bank*, 939 S.W.2d 118 (Tex. 1997). Notwithstanding the foregoing, Lessor's royalty will bear its share of all severance and productions taxes and if a third party, that is not an affiliate of Lessee, compresses, transports, processes, or treats gas produced from the Land to receive a better price, Lessor's royalty will bear its proportionate share of the additional costs and expenses associated therewith, even if such third party charges are passed through an affiliate of Lessee.

(d) If gas produced from the Land or lands pooled herewith is sold by Lessee pursuant to an arms-length contract with a purchaser that is not an affiliate of Lessee, and for a term no longer than that which is usual and customary in the industry at the time the contract is made, then the market value of the gas sold pursuant to the contract shall be the total proceeds received by Lessee in the sale, subject to the provisions of paragraph 4(b) above.

(e) Lessor shall be paid the Royalty Fraction of all payments and other benefits made under any oil or gas sales contract or other arrangement, including take-or-pay payments and payments received in settlement of disputes; provided that if Lessor receives a take-or-pay payment or similar payment for gas that has not been produced, and if the gas is subsequently produced, Lessor will receive only its Royalty Fraction of the market value of the volume of gas for which payment has not already been made.

(f) Unless there is a reasonable title dispute, Lessee must disburse or cause to be disbursed to Lessor its royalty on production from a particular well not later than 120 days after the end of the month of first sales of production. Thereafter, Lessee must disburse or cause to be disbursed to Lessor its royalty on production by the last day of the second month after the month in which production is sold. If not paid when due, Lessor's royalty will bear interest at Eighteen Percent (18%) annual from due date until paid, which amount Lessee agrees to pay. Acceptance by Lessor of royalties that are past due will not act as a waiver or estoppel of its right to receive interest due thereon unless Lessor expressly so provides in writing signed by Lessor. The royalty payment obligations under this Lease shall not be affected by any division order or the provisions of the Section 91.402 of the Texas Natural Resources Code or any similar statute. Notwithstanding anything to the contrary contained in this Lease, should a royalty payment not be made for a period of one year from the anniversary date of the due date as provided for in this Lease, unless there is then in effect another applicable preservation provision of this Lease, Lessor may, at Lessor's option, elect to terminate the applicable portion of this Lease by sending

written notice to Lessee by certified mail. Lessee shall then have ninety (90) days from the date of service of such written notice in which to avoid termination of the applicable portion this Lease by making or causing to be made the proper royalty payment. If such royalty payment is not made on or before the expiration of said 90 day period, or written approval is not obtained from Lessor to defer such payment, Lessor may elect to terminate the applicable portion of this Lease by filing a Notice of Termination with the County Clerk in the county where the Land is located. The effective date of said termination shall be the date said Notice of Termination is filed with the said County Clerk.

(g) As used in this Lease, "affiliate" means (i) a corporation, joint venture, partnership, or other entity that owns more than ten percent of the outstanding voting interest of Lessee or in which Lessee owns more than ten percent of the outstanding voting interest; or (ii) a corporation, joint venture, partnership, or other entity in which, together with Lessee, more than ten percent of the outstanding voting interests of both Lessee and the other corporation, joint venture, partnership, or other entity is owned or controlled by the same persons or group of persons.

(h) The receipt by Lessee from a purchaser or a pipeline company of proceeds of production for distribution to Lessor will not result in Lessee acquiring legal or equitable title to those proceeds, but Lessee will at all times hold Lessor's share of those proceeds for the benefit of Lessor. Notwithstanding the insolvency, bankruptcy, or other business failure of a purchaser of production from the Land or pipeline company transporting production from the Land, Lessee will remain liable for payment to Lessor for, and agrees to pay Lessor all royalties due Lessor together with interest if not timely paid.

(i) If gas is produced from the Land, and if (either because this Lease covers less than all of the gas or other substances in and under the Land or because of assignments by Lessee of undivided interests in this Lease) more than one party owns the working interest share of the gas produced, and if any or all of such co-owners elect to take and market their share of such gas separately, resulting in "split-stream" deliveries of such gas to different purchasers, then the following shall apply:

(1) Lessor shall be entitled to Lessor's royalty share (proportionately reduced, as herein provided, if Lessor owns less than all the applicable gas and/or other substances under the Land) of the proceeds of the sale of the entire production of the gas produced from the Land, regardless of how such gas is allocated among the working interest owners or to whom such gas is sold, and regardless of any agreements to the contrary among the working interest owners or other parties; and

(2) Lessee, its successors and assigns, shall be liable for Lessor's entire royalty on such gas production, regardless of whether Lessee actually is allocated or receives any proceeds of sale of any such production. Lessee shall account to Lessor for all of Lessor's royalty share of such gas production, so that Lessor shall not be required to receive royalties from more than one purchaser or working interest owner, and Lessee shall provide production statements from all purchasers of such gas showing the volumes sold and the price paid therefore, and any applicable adjustments.

**5. Shut-in Royalty.** After the Primary Term, or any time thereafter, if there is a gas well on this Lease or on lands pooled with the Land capable of producing in paying quantities, but gas is not being sold for a period of sixty (60) consecutive days, and this Lease is not otherwise being maintained, Lessee shall pay or tender in advance an annual shut-in royalty of \$100.00 per net mineral acre then covered by this Lease. Payment with respect to a well will be due within 60 days after the later of (i) the date the well is shut-in, or (ii) the date this Lease is not otherwise being maintained. Thereafter, while such well remains shut-in, Lessee shall make like shut-in payments or tenders at annual intervals on or before the anniversary of the date the first payment is due. While shut-in royalty payments are timely and properly paid, this Lease shall be considered as producing in paying quantities for all purposes of this Lease. The obligation of Lessee to pay shut-in royalty is a condition and not a covenant. The payment or tender of royalty under this paragraph may be made by the check of Lessee mailed or delivered to the parties entitled thereto on or before the due date. Lessee may exercise its right to make shut-in royalty payments as provided for herein from time to time. Notwithstanding anything herein to the

contrary, this Lease shall not be maintained by shut-in royalty payments for periods totaling more than three (3) years of cumulative time.

Notwithstanding anything to the contrary contained in this Lease, at the option of Lessee, which may be exercised by Lessee giving notice to Lessor, a well which has been drilled and Lessee intends to frac shall be deemed a well capable of producing in paying quantities and the date such well is shut-in shall be when the drilling operations are completed.

Notwithstanding anything to the contrary contained in this Lease, should a shut-in royalty payment not be properly made in a timely manner as provided for in this Lease, unless there is then in effect another applicable preservation provision of this Lease, Lessor may, at Lessor's option, elect to terminate the applicable portion of this Lease by sending written notice to Lessee by certified mail. Lessee shall then have thirty (30) days from the date of service of such written notice in which to avoid termination of the applicable portion this Lease by making or causing to be made the proper shut-in royalty payment. If such shut-in royalty payment is not made on or before the expiration of said 30 day period, or written approval is not obtained from Lessor to defer such payment, Lessor may elect to terminate the applicable portion of this Lease by filing a Notice of Termination with the County Clerk in the county where the Land is located. The effective date of said termination shall be the date said Notice of Termination is filed with the said County Clerk.

**6. Continuous Operations.** If, at the expiration of the Primary Term, oil or gas is not being produced from the Land or lands pooled herewith, but Lessee is then engaged operations (as defined below) on the Land or lands pooled herewith, or shall have completed a dry hole thereon within 60 days prior to the end of the Primary Term, the Lease will not terminate but will remain in effect for so long thereafter as operations on said well or any additional well are carried out with due diligence with no cessation of more than ninety (90) days, and if the operations result in the production of oil or gas, so long thereafter as oil or gas is produced from the Land or from land pooled therewith. For the purposes of this Lease, the term "operations" means operations for any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back, or repairing of a well in search for or in the endeavor to obtain production of oil or gas. Further, the term "production" in this Lease means production in paying quantities. If, after the expiration of the Primary Term and after oil and gas is produced from the Land, or from land pooled therewith, the production thereof should cease from any cause, this Lease shall not terminate if Lessee commences operations within 60 days after the cessation of such production, but shall remain in force and effect so long as such operations are prosecuted with no cessation of more than 60 consecutive days, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from the Land, or from land pooled therewith.

**7. Pooling.** Lessee shall have the right but not the obligation to pool all or any part of the Land or interest therein with any other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this Lease, either before or after the commencement of production or operations, whenever Lessee deems it necessary or proper to do so in order to prudently develop or operate the Land, whether or not similar pooling authority exists with respect to such other lands or interests. The unit formed by such pooling for an oil well which is not a horizontal completion shall not exceed 40 acres plus a maximum acreage tolerance of 10%, and for a gas well or a horizontal completion shall not exceed 640 acres plus a maximum acreage tolerance of 10%; provided that a larger unit may be formed for an oil well or gas well or horizontal completion to conform to any well spacing or density pattern that may be prescribed or permitted by any governmental authority having jurisdiction to do so. For the purpose of the foregoing, the terms "oil well" and "gas well" shall have the meanings prescribed by applicable law or the appropriate governmental authority, or, if no definition is so prescribed, "oil well" means a well with an initial gas-oil ratio of less than 100,000 cubic feet per barrel and "gas well" means a well with an initial gas-oil ratio of 100,000 cubic feet or more per barrel, based on 24-hour production test conducted under normal producing conditions using standard lease separator facilities or equivalent testing equipment; and the term "horizontal completion" means an oil or gas well in which the horizontal component of the gross completion interval in the reservoir exceeds the vertical component thereof. In exercising its pooling rights hereunder, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling. Production or operations anywhere on a unit which includes all or any part of the Land shall be treated as if it were production or operations on the Land, except that the production on which Lessor's royalty is calculated shall be that proportion of the total unit production which the total net acreage covered by this Lease and included in the unit bears to the total surface acreage in the

unit. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall have the recurring right but not the obligation to revise any unit formed hereunder by expansion or contraction or both, either before or after commencement of production, in order to conform to the well spacing or density pattern prescribed or permitted by the governmental authority having jurisdiction, or to conform to any productive acreage determination made by such governmental authority. Further, in making such a revision, Lessee shall file of record a written declaration describing the revised unit and stating the effective date of revision. To the extent any portion of the Land is included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly. In the absence of production in paying quantities from a unit, or upon permanent cessation thereof, Lessee may terminate the unit by filing of record a written declaration describing the unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests. If this Lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this Lease but Lessee shall nevertheless have the right to pool as provided above with consequent allocation of production as above provided. As used in this paragraph, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the Land.

Royalties shall be computed on the portion of production allocated to the Land. No part of the Land may be included in a pooled unit unless all of the Land is included in said pooled unit.

Lessee will not implement any re-pressuring, pressure maintenance, recycling or secondary recovery operations without the prior written consent of Lessor, which shall be at Lessor's sole discretion.

**8. Offset Wells.** This offset obligation shall go into effect one (1) year after the effective date of this Lease and shall not apply to any well drilled prior to the effective date of this Lease. If the nearest bottom-hole producing perforations in a well capable of producing oil or gas or other hydrocarbons in paying quantities should hereafter be completed within three hundred thirty (330) feet of the Land then, within one hundred twenty (120) days after the offsetting well continuously produces in paying quantities for sixty (60) consecutive days (but subject to Paragraph 11 hereof), Lessee shall commence operations for and thereafter diligently prosecute the drilling of an offset well at a permitted location which is reasonably designed to protect the Land from drainage. Lessee's obligation to drill under this paragraph shall not apply if the 40 acres nearest the offsetting well as to the formation in which the offsetting well is producing is already included within a pooled unit or proration unit as determined by Lessee. Lessor and Lessee agree that this offset provision shall supersede and replace any implied obligations of Lessee to protect against drainage during the Primary Term of this Lease and after the Primary Term (if perpetuated), whether or not Lessee is the operator or an interest owner as to any offsetting well.

**9. NO SURFACE OPERATIONS/ OFFSITE OPERATIONS. NOTWITHSTANDING ANY LANGUAGE CONTAINED HEREIN TO THE CONTRARY, LESSEE HEREBY WAIVES AND RELEASES ALL SURFACE RIGHTS OF EVERY KIND AND NATURE ACQUIRED UNDER THIS LEASE, IF ANY, OTHER THAN THE RIGHT TO SURVEY DURING THE PRIMARY TERM. ACCORDINGLY, LESSEE SHALL NOT (I) CONDUCT ANY SURFACE OPERATIONS WHATSOEVER UPON THE LAND, (II) PLACE ANY PERSONAL PROPERTY, FIXTURES OR EQUIPMENT UPON THE LAND, OR (III) ENTER UPON THE SURFACE OF THE LAND FOR ANY REASON OR FOR ANY AMOUNT OF TIME; HOWEVER, THIS LIMITATION SHALL NOT AFFECT THE RIGHT OF LESSEE OR ITS SUCCESSORS AND ASSIGNS TO ENTER THE LAND FOR SURVEYING OR UTILIZE THE SUBSURFACE OF THE LAND OR ENGAGE IN DIRECTIONAL OR HORIZONTAL DRILLING ACTIVITIES OR OPERATIONS WHICH COMES UNDER THE LAND AND/OR FROM POOLING IN ACCORDANCE WITH THIS LEASE, BUT IN NO EVENT MAY THE MINING OR DRILLING ACTIVITIES OR OPERATIONS PENETRATE THE LAND AT A DEPTH OF LESS THAN 1,000 FEET BELOW THE SURFACE. FURTHER, LESSEE WILL MEET ALL CITY ORDINANCES IN THE DRILLING OF WELLS FROM SURFACE LOCATIONS THAT OFFSET THE LAND, BUT IN NO EVENT SHALL LESSEE DRILL A WELL AT A SURFACE LOCATION**

**THAT IS WITHIN 300 FEET OF THE LAND. THIS PROVISION SHALL SURVIVE TERMINATION OF THE LEASE.**

As a result of land development in the vicinity of the Land, governmental rules or ordinances regarding well sites, and/or surface restrictions as may be set forth in this Lease and/or other leases in the vicinity, surface locations for well sites in the vicinity may be limited and Lessee may encounter difficulty securing surface location(s) for drilling, reworking or other operations. Therefore, since drilling, reworking or other operations are either restricted or not allowed on the Land or other leases in the vicinity, it is agreed that any such operations conducted at a surface location off of the Land or off of lands with which the Land is pooled in accordance with this Lease, provided that such operations are associated with a directional well for the purpose of drilling, reworking, producing or other operations under the Land or lands pooled therewith, shall for purposes of this Lease be deemed operations conducted on the Land. Nothing contained in this paragraph is intended to modify any surface restrictions or pooling provisions or restrictions contained in this lease, except as expressly stated.

**10. Assignments.** The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. Lessee shall notify Lessor in writing of any assignment or sublease of this Lease only if assigned to a company of lesser financial viability than XTO Energy at the time of Assignment. Lessee and its assignees and sublessee's of an interest in this Lease shall be severally liable. No change or division in ownership of the Land or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of Lessee; and no such change in ownership shall be binding on Lessee nor impair the effectiveness of any payments made hereunder until Lessee shall have been furnished, thirty (30) days before payment is due, a certified copy of the recorded instrument evidencing any transfer, inheritance, sale or other change in ownership.

**11. Force Majeure.** Should Lessee be wholly prevented by reason of Force Majeure from complying with any express or implied covenant of this Lease (other than a requirement to pay money), from conducting operations on the Land or lands pooled with the Land, or from producing oil or gas, then while so prevented, that covenant will be suspended; Lessee will not be liable for damages for failure to comply therewith; this Lease will be extended so long as Lessee is prevented from conducting operations on or from producing oil or gas from lands pooled with the Land, but in no event for more than six months per occurrence and the total time which this lease may be extended by this paragraph may not exceed Two years; and the time while Lessee is so prevented will not be counted against Lessee. "Force Majeure" means any Act of God, riot, war, strike, insurrection, any federal or state law, or any rule or regulation of governmental authority, or other similar cause (other than financial reasons), lack of a suitable market or other causes beyond the control of Lessee, BUT NOT for Lessee's failure to obtain a necessary permit for its operations from a local, state or federal governing body. Before the provisions of this paragraph may be relied upon by Lessee, Lessee must first furnish written notice to Lessor, within a reasonable time after the first day of the provisions hereof are relied upon, of such event, giving the beginning date thereof; and, within a reasonable time after such event ceases, notify Lessor of the resumption of activities.

**12. Warranty and Proportionate Reduction.**

Lessor makes no warranty of any kind, either express or implied, with respect to title to the Land or the minerals subject to this Lease. However, if Lessor owns an interest in the Land or the minerals subject to this Lease less than the entire fee simple estate, then the royalties payable hereunder will be reduced proportionately. By acceptance of this Lease, Lessee acknowledges that it has been given full opportunity to investigate and has conducted sufficient investigation to satisfy itself as to the title to the Land and the minerals subject to this Lease, and Lessee assumes all risk of title failures, and in connection therewith Lessee shall have no recourse against Lessor, including no right to a refund of the bonus and royalties paid for or under this Lease. Further, in the event Lessor does not own all of the minerals subject to his Lease, Lessee agrees that it will not conduct operations on the surface of the Land. This provision shall survive termination of the Lease.

**13. Notices.** All notices will be deemed given and reports will be deemed delivered if sent by certified letter, return receipt requested, properly addressed and deposited in the United States

Postal Service, postage prepaid, to Lessor and Lessee at the addresses shown above. Either party may designate a new address by written notice to the other party.

**14. Attorney's Fees.** In the event that Lessor or Lessee is required to employ legal counsel for the enforcement of any provision of this Lease and receives a final unappealable judgment, the prevailing party will be entitled to recover from the other party the reasonable attorney's fees and expenses incurred by said party.

**15. Insurance.** At all times while this Lease is in force, Lessee shall acquire and maintain insurance in compliance with City of Grapevine oil and gas ordinance, as amended and any other municipal authority having jurisdiction over the Land and/or operations conducted upon the Land.

**16. Indemnity.** LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS LESSOR, AND LESSOR'S REPRESENTATIVES, EMPLOYEES, TRUSTEES, VOLUNTEERS, AGENTS, SUCCESSORS, AND ASSIGNS AGAINST ALL EXPENSES, CLAIMS, DEMANDS, LIABILITIES, AND CAUSES OF ACTION OF ANY NATURE FOR INJURY TO OR DEATH OF PERSONS AND LOSS OR DAMAGE TO PROPERTY, WHETHER THE CLAIMS ARE BROUGHT OR PURSUED AS CLAIMS OF NEGLIGENCE, BREACH OF CONTRACT, NUISANCE, TORT, STRICT LIABILITY, OR OTHERWISE, AND INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES, EXPERT FEES, AND COURT COSTS, CAUSED BY LESSEE'S ACTIVITIES AND OPERATIONS ON THE LAND, OR LESSEE'S MARKETING OF PRODUCTION FROM THE LAND, OR ANY VIOLATION OF ANY ENVIRONMENTAL REQUIREMENTS BY LESSEE. AS USED IN THIS PARAGRAPH, THE TERM "LESSEE" INCLUDES LESSEE, ITS AGENTS, EMPLOYEES, SERVANTS, CONTRACTORS, AND ANY OTHER PERSON ACTING UNDER ITS DIRECTION AND CONTROL, AND ITS INDEPENDENT CONTRACTORS. AS USED IN THIS PARAGRAPH, THE TERM "LAND" INCLUDES THE LAND COVERED BY THIS LEASE OR ANY LANDS POOLED THEREWITH. LESSEE'S INDEMNITY OBLIGATIONS SURVIVE THE TERMINATION OF THIS LEASE.

**17. Payment of Royalties.** The rights of Lessor under this Lease shall be in addition to, and not in lieu of, all rights Lessor may have as to payment of royalty under Texas law, including, without limitation, V.T.C.A. NATURAL RESOURCES CODE §§ 91.401 through 91.405.

**18. Inspection of Lessee's Records.** Upon written request, Lessor and/or Lessor's representative shall have the right to inspect all lease and title records and well records of Lessee relating to the production data attributable to this Lease, , including the right to audit Lessee's books insofar as they relate to the calculation of Lessor's royalties. Such inspection shall be limited to an annual basis only, during Lessee's normal business hours and be exercised by Lessor by giving Lessee not less than thirty (30) business days prior notice; provided, however, such audit rights shall not extend to any periods which are twenty-four months (24) prior to the date of such audit notice. Lessor shall bear all costs and expenses of any such audit.

**19. Implied Covenants.** Except as otherwise expressly provided herein, nothing in this Lease negates the implied covenants imposed upon Lessee under applicable law.

**20. Division Orders.** If Lessee shall require the execution of a division order for payment of royalty payable under this lease, then the only form of division order permitted for Lessee's use shall be such form promulgated by the State of Texas and set forth in Section 91.402(d), of the Texas Natural Resources Code as amended from time to time. Transfer orders, if required, shall be solely for the purpose of confirming the interest transferred by Lessor. In the event of production, all division orders prepared by Lessee and its assigns shall eliminate all references to ratification of Lessee's acts and ratification of any related gas or oil purchase contracts. If such statements are contained therein, such ratifications are void and of no effect. Any amendment, alteration, extension or ratification of this lease, or of any term or provision of this lease, shall be made only by an instrument clearly denominating its purpose and effect, describing the specific terms or provisions affected and the proposed change or modification hereof, and executed by the party against whom any such amendment, alteration, extension or ratification is sought to be enforced, and any purported amendment, alteration, extension or ratification not so drafted shall be of no force or effect.

**21. Compliance with Governing Law.** Lessee will conduct all operations under this Lease and/or on lands pooled herewith in compliance with the current and future rules of the Railroad Commission of Texas, and all federal, state and local laws, rules, regulations, and ordinances, including without limitation all environmental laws, rules, regulations and ordinances.

**22. Excess Royalty Payments.** Any payment of royalty or Shut-in Royalty hereunder paid to Lessor in excess of the amount actually due to the Lessor shall nevertheless become the property of Lessor if Lessee does not make written request to Lessor for reimbursement within one (1) year from the date that Lessor received the erroneous payment, it being agreed and expressly understood between the parties hereto that Lessor is not the collecting agent for any other royalty owner under the Land, and a determination of the name, interest ownership and whereabouts of any person entitled to any payment whatsoever under the terms hereof shall be the sole responsibility of Lessee. Should monthly royalty payments cease under this Lease prior to Lessee recouping any such overpayments out of a portion of Lessor's monthly royalty, Lessee shall absorb such loss in its entirety without any liability to or reimbursement from Lessor.

**23. Depth Severance.** One (1) Year after the primary term of this Lease, this Lease shall terminate as to all depths lying below one hundred feet (100') below the stratigraphic equivalent of the deepest formation drilled; provided, however, if Lessee is then engaged in operations on the Land or on lands pooled therewith, this Lease shall remain in full force and effect as to all depths so long as no more than ninety (90) days elapse between said operations

**24. Damages.** Should Lessor or tenants on the Land suffer loss or damage to trees, water wells, fences and other personal property, buildings or other improvements as a result of the operations of Lessee under the terms of this lease, Lessee agrees to pay Lessor or tenants the actual amount of their loss or damage.

**25. Subordination Agreement.** Lessee shall not require Lessor to furnish a subordination agreement of any kind as a condition for receipt of any royalty payment or other payment obligation hereunder. Upon request, Lessor shall (i) disclose to Lessee contact information for any such lienholder, (ii) consent to Lessee making contact with any such lienholder, and consent to such lienholder disclosing the status of any such lien and the underlying obligation, and (iii) agree to reasonably cooperate with Lessee to obtain such subordination agreement from Lessor's lender(s). Lessee shall pay all fees and expenses charged by Lessor's lender for any subordination agreement sought by Lessee.

**26. Release.** In the event this Lease terminates for any reason as to all or any part of the Land, Lessee shall, within 60 days thereafter, deliver to Lessor a recordable release covering all of the Land or that portion of the Land as to which this Lease terminated

**27. Environmental and Operational Provisions.** Lessee's operations are being conducted in or near an urban residential area. Therefore, with regard to any well drilled within 600 feet of said Land, Lessee shall:

(1) Equip any and all compressors, machinery and drilling equipment with noise suppression, muffling devices and pollution constraints.

(2) Not operate or maintain any compressors within 600 feet of said Land, except ones to be used solely for gas odorizing or initial gas lift purposes and Lessee shall take all reasonable steps to muffle any sound or noise from its compressors,

(3) Lessee agrees to comply with all environmental and operational requirements of City of North Richland Hills Oil and Gas Ordinance, as amended, and any other municipal authority having jurisdiction over the Land and/or operations conducted upon the Land unless variances are granted by City Council.

(4) Provide fencing around the drillsite tract in order to reasonably and effectively prevent the migration of vermin and small animals to the adjacent properties and lands;

(5) While drilling operations are taking place, place lighting directed on the derrick and drill site area for safety reasons, and take all reasonable precautions to avoid directing the lighting onto surrounding neighborhoods and properties.



(6) Lessee shall use all reasonable safeguards to prevent contamination or pollution of any environmental medium, including soil, surface waters, groundwater, sediments, and surface or subsurface strata, ambient air or any other environmental medium in, on, or under the Land or lands pooled therewith, by any waste, pollutant, or contaminant. Lessee shall not bring or permit to remain on the Land or lands pooled therewith any asbestos containing materials, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances (as the term "Hazardous Substance" is defined in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601, et seq.) or toxic substances under any federal, state or local law or regulation ("Hazardous Materials"), except ordinary products commonly used in connection with oil and gas exploration and development operations and stored in the usual manner and quantities. **LESSEE SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND LESSOR, ITS AGENTS, EMPLOYEES, TENANTS, GUESTS, INVITEES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, DAMAGES, JUDGMENTS, PENALTIES, LIABILITIES, AND COSTS (INCLUDING REASONABLE ATTORNEYS FEES AND COURT COSTS) CAUSED BY (1) LESSEE'S VIOLATION OF THE FOREGOING PROHIBITION OR (2) LESSEE'S RELEASE OR DISPOSAL OF ANY HAZARDOUS MATERIALS ON, UNDER OR ABOUT SAID LAND OR LANDS POOLED THEREWITH DURING LESSEE'S OCCUPANCY OR CONTROL OF SAME. LESSEE SHALL CLEAN UP, REMOVE, REMEDY, AND REPAIR ANY SOIL OR GROUND WATER CONTAMINATION AND DAMAGE CAUSED BY LESSEE'S RELEASE OF ANY HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT SAID LAND OR LANDS POOLED THEREWITH DURING LESSEE'S OCCUPANCY OF SAME IN CONFORMANCE WITH THE REQUIREMENTS OF APPLICABLE LAW. THIS INDEMNIFICATION AND ASSUMPTION SHALL APPLY, BUT IS NOT LIMITED TO, LIABILITY FOR RESPONSE ACTIONS UNDERTAKEN PURSUANT TO CERCLA OR ANY OTHER ENVIRONMENTAL LAW OR REGULATION. LESSEE SHALL IMMEDIATELY GIVE LESSOR WRITTEN NOTICE OF ANY BREACH OR SUSPECTED BREACH OF THIS PARAGRAPH, UPON LEARNING OF THE PRESENCE OF ANY HAZARDOUS MATERIALS, OR UPON RECEIVING A NOTICE PERTAINING TO HAZARDOUS MATERIALS WHICH AFFECT SAID LAND OR LANDS POOLED THEREWITH. THE OBLIGATIONS OF LESSEE HEREUNDER SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION FOR ANY REASON, OF THIS LEASE.**

**28. Dwellings.** No structure of any kind shall be used as a dwelling house for any persons associated with the operations on lands pooled with the Land.

**29. Groundwater Protection.** Any oil or gas wells drilled by Lessee under this Lease shall be drilled in compliance with the surface casing requirements imposed by the State of Texas for groundwater protection and Lessee shall install such surface casing in the required manner in order to insure the protection of all fresh water bearing formations in and under the Land.

**30. Visual Appearance.** Lessee shall maintain any drillsites within 500 feet of the Land in a clean and orderly fashion.

**31. Mud Pits.** Lessee shall locate no mud pits on lands located within 500 feet of the Land.

**32. Headings.** Paragraph headings are used in this Lease for convenience only and are not to be considered in the interpretation or construction of this Lease.

**33. Binding Effect.** This Lease is binding upon and for the benefit of Lessor, Lessee, and their respective heirs, personal representatives, successors, and assigns.

**34. Jurisdiction and Venue.** Jurisdiction and venue for any legal dispute between Lessor and Lessee related in any way to this lease shall be in the court(s) of competent jurisdiction located in Tarrant County, Texas.

**35. Option to Extend.** Lessee is hereby given the option, to be exercised prior to the date on which this lease or any portion thereof would expire in accordance with its terms and provisions of extending this lease for a period of two (2) years as to all or any portion of the acreage then held hereunder which would expire unless so extended. The only action required by Lessee to exercise such option being the payment to Lessor (or for Lessor's credit at the depository bank named herein) and/or such parties entitled under any change of ownership according to Lessee's

records, **an additional consideration of the sum of Twenty Thousand Dollars (\$20,000.00) per net mineral acre** owned by the party entitled to such payment at such time of extension, in the acreage so extended. If this lease is extended as to only a portion of the acreage then covered hereby, Lessee shall designate such portion by a recordable instrument.

**36. Free Will.** Be it known that Lessor has read this lease and the decision made by Lessor in signing this lease is made after fully researching this matter independent of any other information provided by any person or entity. Lessor agrees to sign this agreement of their own free will and Lessor was in no way coerced to sign said Lease by any person or entity. All proceeds from the Lease fully remain the property of the Lessor.

**37. Memorandum of Oil and Gas Lease.** Contemporaneously with the execution of this Lease, Lessor and Lessee have executed a Memorandum of Oil and Gas Lease, and Lessor and Lessee agree that such Memorandum of Oil and Gas Lease, which makes reference to this Lease, will be recorded in the appropriate records of the counties in which said Land is located in lieu of the recording of this Lease in its entirety. The recording of said Memorandum of Oil and Gas Lease shall be binding upon Lessor and Lessee, and their respective heirs, successors, legal representatives and assigns, the same as if this Lease was filed of record in its complete text.

**38. Counterparts.** This Lease may be executed in any number of counterparts of each of the Lessors as identified on Schedule I hereto and each counterpart of a Schedule I hereto so executed shall have the same force and effect as an original instrument and as if all the parties to the aggregate counterparts had signed the same instrument. For recording purposes, the counterpart signature and acknowledgment of the Schedule I of each of the Lessors may be included in one instrument to be filed for record in the records of the County Clerk of Tarrant County, Texas.

**39.** This Lease is binding upon and for the benefit of Lessor, Lessee, and their respective heirs, personal representatives, successors, and assigns

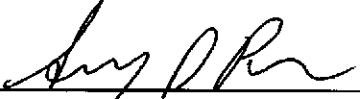
**40. Release and Discharge.** Lessor acknowledges that the terms of the Lease, this addendum, the amount of the royalty and bonus paid hereunder, and all other terms negotiated with Lessee (herein the "Negotiated Terms") with respect to this Lease, were obtained as a result of negotiations between Lessee and the group known as GRNA, which consists of a committee of unpaid volunteers. In consideration of the efforts spent by GRNA, the committee members, other volunteers and attorneys in negotiating and obtaining the Negotiated Terms on behalf of Lessor, Lessor and its respective agents, spouses, co-owners, predecessors, parents, subsidiaries, affiliated corporations, or other affiliated entities, successors, partners, principals, assigns, attorneys, servants, agents, employees, heirs, consultants and other representatives, does hereby release and forever discharge GRNA, the committee members, and any volunteers or attorneys representing GRNA, from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorney's fees, and liabilities of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether known or unknown, past, present, or future, which Lessor has, has had, or claims to have against the individual committee members, volunteers, or GRNA which relate to, arise from, or are in any manner connected to (i) the Negotiated Terms, (ii) the negotiation of the Negotiated Terms, (iii), the inclusion and/or omission of any terms within the Negotiated Terms, (iv) any activity, act or omission in any way related to the Negotiated Terms or the negotiation of the Negotiated Terms or (v) any and all representations made prior, during, and subsequent to Lessor's execution of this Lease and Amendment.

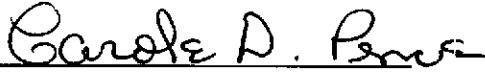
**41. Lessor Acknowledgement.** GRNA is an all volunteer group of residents and local property owners in the vicinity of the Land. The group's purpose is to unite in the hopes of negotiating the best terms possible with respect to an oil and gas lease with Lessee. By signing this Lease, Lessor acknowledges and stipulates that Lessor was not obligated to sign this Lease based upon the terms negotiated by GRNA with Lessee and that Lessor had the right to negotiate its own terms and with any company prior to signing this Lease. Additionally, Lessor acknowledges that it is Lessor's obligation to investigate this Lease, all negotiated terms, to take such action as necessary to make an informed decision prior to signing this Lease, and that the decision made by Lessor in signing this Lease is made after fully researching this matter independent of any other information provided by GRNA and/or its committee members, representatives and/or attorneys. Lessor agrees and acknowledges that it is ultimately Lessor's responsibility to (a) determine if Lessor wants to negotiate with Lessee, (b) fully investigate the issues and facts

related to signing an oil and gas lease, and (c) determine what terms are acceptable to Lessor to be included in this Lease.

**SEE EXHIBIT 'A' FOR LEGAL DESCRIPTION**

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

  
Gary D. Pence

  
Carole D. Pence

STATE OF TEXAS }

COUNTY OF TARRANT }

} ss.

(ACKNOWLEDGMENT FOR INDIVIDUAL)

This instrument was acknowledged before me on the 1st day of October 2008 by

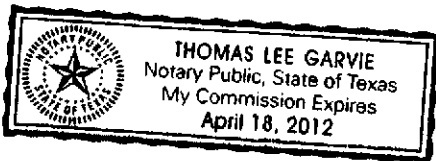
**Gary D. Pence and Carole D. Pence, husband and wife**

Signature

  
Notary Public

Printed

Thomas LEE Garvie



## **EXHIBIT "A"**

**0.407 acres, more or less, and being Blk 1, Lot 10, Heatherwood Estates Addition, an Addition to the City of Hurst, Tarrant County, Texas, according to the Plat and Dedication recorded in Volume 388-197, Page 37, Plat Records, Tarrant County, Texas, and being those same lands more particularly described in a General Warranty Deed recorded thereof in Volume 11283, Page 1653, Deed Records, Tarrant County, Texas, and amendments thereof, including streets, easements, and alleyways adjacent thereto, and any riparian rights.**